

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, May 11, 2011, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

BOARD MEMBERS PRESENT: Robert Bartholomew - Chairman
Tom Day
Walter Schmidt
Nancy M. Bonniwell
Richard Bayer

BOARD MEMBERS ABSENT:

SECRETARY TO THE BOARD: Nancy M. Bonniwell

OTHERS PRESENT: Town of Merton Board of Adjustment
Mary E. Finet, Senior Land Use Specialist
Robyn Schuchardt, Waukesha Co. Assistant Corporation Counsel
Paul Buelow, BA11:014, petitioner
David Hoefgen, BA11:015, petitioner
Greg and Amanda Kaepernick, BA11:017, petitioners
Jeffrey Ellis, BA09:019, petitioner

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

CLOSED SESSION:

Mr. Day

I make a motion to convene in closed session pursuant to Section 19.85(1)(g), Wisconsin Statutes, to confer with legal counsel from the Waukesha County Corporation Counsel's Office who is rendering oral or written legal advice concerning strategy to be adopted by the Waukesha County Board of Adjustment with respect to litigation in which it is involved, specifically concerning the following case:

Donald and Susanne Dysland vs. Waukesha County Board of Adjustment, Waukesha County Circuit Court Case No. 08-CV-3387.

The motion was seconded by Mr. Schmidt and carried with a roll call vote as follows:

Richard Bayer: *Aye*
Nancy Bonniwell: *Aye*

Tom Day: *Aye*
Walter Schmidt: *Aye*
Bob Bartholomew: *Aye*

OPEN SESSION:

Mr. Day *I make a motion to reconvene in open session.*

The motion was seconded by Ms. Bonniwell and carried with a roll call vote as follows:

Richard Bayer: *Aye*
Nancy Bonniwell: *Aye*
Tom Day: *Aye*
Walter Schmidt: *Aye*
Bob Bartholomew: *Aye*

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Day *I move to approve the Summary of the Meeting of April 13, 2010.*

The motion was seconded by Mr. Schmidt and carried unanimously.

NEW BUSINESS:

BA11:014 PAUL AND MARY BUELOW:

Mr. Day *I make a motion to approve the request, in accordance with the Staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Bayer and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for after-the-fact variances from the private road setback requirement and the open space requirement of the Waukesha County Shoreland and Floodland Protection Ordinance, to authorize the addition of a 12 ft. x 16 ft. enclosed porch on the back of the residence and **approval** of the request for after-the-fact variances from the private road setback requirement and the public road setback requirement of the Waukesha County Shoreland and Floodland Protection Ordinance, to authorize replacement of the walls of the 8 ft. x 24 ft. enclosed porch on the front of the residence, subject to the following conditions:

1. A Preliminary Site Evaluation (PSE) of the septic system must be conducted by the Environmental Health Division of the Waukesha County Department of Parks and Land Use. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that they have no objection to the newly constructed enclosed porch on the back of the residence, that it meets all required minimum separation distances, and it would not have an adverse effect

on the operation of the private waste disposal system. If that cannot be done, a Sanitary Permit for a new waste disposal system must be issued, and a copy furnished to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.

2. Any construction that is determined by the Town of Merton Building Inspector not to be in conformance with the Building Code must be brought into conformance with the Building Code, prior to the expiration date of the Zoning Permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It is felt that it would be unnecessarily burdensome not to authorize the rebuilt enclosed front porch or the new enclosed back porch.

The rebuilt enclosed front porch extends no closer to S.T.H. 83 than the previously existing enclosed front porch and it is an integral and aesthetically appealing part of the residence. Both enclosed porches extend no closer to the Clare Lane than the rest of the residence and the new enclosed back porch encroaches less than four (4) ft. into the private road setback area. Further, Clare Lane is a private road serving only four homes beyond the subject property and neither enclosed porch poses a safety hazard or is in any way contrary to the public interest. Finally, since the lot area is only 10,830 sq. ft. and the minimum open space requirement is 15,000 sq. ft., conformance with the open space requirement is impossible and even the most minor expansion is not possible without a variance from the open space requirement. The new enclosed back porch results in only a minor decrease in the open space and is in conformance with the floor area ratio requirement. Therefore, approval of the request for after-the-fact variances from the road setback requirement from a private road and from the open space requirement to authorize the addition of the 12 ft. x 16 ft. enclosed porch on the back of the residence and approval of the request for after-the-fact variances from the road setback requirement from a private road and from the road setback requirement from a public road to authorize replacement of the walls of the 8 ft. x 24 ft. enclosed porch on the front of the residence, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA11:015 DAVID HOEFGEN:

Ms. Bonniwell

I make a motion to approve the request for a road setback variance for the porch to allow it to remain 14.6 ft. from the established road right-of-way and to approve the request for a variance from the 50% rule to permit repair and remodeling of the house and barn, with the following condition:

This approval authorizes only the repair and remodeling of the residence noted in the application, the cost of which shall not exceed \$60,000, as presented, and the repair and remodeling of

the barn noted in the application, the cost of which shall not exceed \$3,000, as presented.

The motion was seconded by Mr. Schmidt and carried with four (4) yes votes. Mr. Day voted no.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for an after-the-fact variance from the road setback requirement of the Waukesha County Zoning Code, to authorize the covered porch on the road side of the residence and **approval** of the request for variances from the remodeling a non-conforming structure in excess of 50% of its fair market value provision of the Waukesha County Zoning Code, to permit repair and remodeling of the residence and repair and remodeling of the barn.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It would be unnecessarily burdensome not to grant the requested after-the-fact road setback variance to authorize the covered porch on the road side of the residence, as the new porch replaces a previously existing enclosed porch that was apparently just as close to the road. The porch enhances the appearance of the residence and although S.T.H. 67 is a major arterial, the porch is far enough from the road that it will not be a safety hazard or interfere with the travelling public's use of the road. Further, there are several mature trees located closer to the road than the residence, which serve to buffer the impact of the residence and porch within the road setback area. Therefore, granting the requested after-the-fact road setback variance to authorize the rebuilt porch is not contrary to the public interest and is in conformance with the purpose and intent of the Ordinance.

It would also be unnecessarily burdensome not to grant the requested variance to remodel a non-conforming structure in excess of 50% of its fair market value to permit repair and remodeling of the residence and repair and remodeling of the barn. The proposed repairs and remodeling will not increase the degree of non-conformity, as the footprint of the structures is not changing. Both the residence and the barn are substantial structures that have been in existence for many years and the barn especially is an historic structure that is worthy of preservation. Therefore, granting the requested variances to remodel a non-conforming structure in excess of 50% of its fair market value to permit repair and remodeling of the residence and repair and remodeling of the barn is not contrary to the public interest and is in conformance with the purpose and intent of the Ordinance.

BA11:017 GREG AND AMANDA KAEPERNICK:

Mr. Schmidt

*I move to **approve** the request, in accordance with the Staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Day and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for a variance from the road setback requirement of the Waukesha County Zoning Code, to permit the construction of a covered porch on the road side of the residence, subject to the following conditions:

1. The new porch shall extend no closer to the road than the existing porch.
2. Prior to the issuance of a Zoning Permit, a Plat of Survey showing all existing structures and the location of the proposed porch, in conformance with the above condition, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
3. A Preliminary Site Evaluation (PSE) of the septic system must be conducted by the Environmental Health Division of the Waukesha County Department of Parks and Land Use. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that they have no objection to the proposed porch, that it meets all required minimum separation distances, and it would not have an adverse effect on the operation of the private waste disposal system. If that cannot be done, a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It would be unnecessarily burdensome not to authorize the proposed porch, most of which would be a replacement of existing porches. The proposed porch is in keeping with the design of the residence, which is a farm house that was built over a hundred years ago, and it will enhance its appearance. Further, the proposed porch will extend no closer to the road than the existing porch and it will not be a safety hazard or interfere with the travelling public's use of the road. Therefore, granting the requested road setback variance to permit the proposed porch is not contrary to the public interest and is in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA09:019 JEFFREY ELLIS:

Mr. Schmidt

*I move to **approve** the request for a two-year extension of the deadline for obtaining a Zoning Permit utilizing the variances granted on June 9, 2009, extending the deadline from June 15, 2011, to June 15, 2013.*

The motion was seconded by Ms. Bonniwell and carried unanimously.

The Planning and Zoning Division staff's recommendation, as stated in the Memorandum dated May 11, 2011, was for **approval** of the request for a two-year extension to the deadline for obtaining a Zoning Permit utilizing variances from the shore and floodplain setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance that were approved by the Waukesha County Board of Adjustment on June 9, 2009, to permit the existing single-family residence to be razed and replaced with a new single-family residence.

The reasons for the recommendation, as stated in the Memorandum, are as follows:

Although the Waukesha County Shoreland and Floodland Protection Ordinance was amended effective December 23, 2010, the requirements have not changed with respect to the approved variances since the original decision.

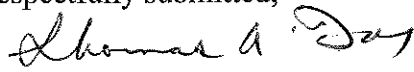
It was also noted in the Memorandum that it is anticipated that the Waukesha County Shoreland and Floodland Protection Ordinance will be amended again sometime in the near future. Therefore, the owner should be aware that if the Ordinance is amended before the Zoning Permit is obtained and the proposal requires additional variances from the amended Ordinance, all provisions of the amended Ordinance (including, but not limited to shore and floodplain setbacks) must be complied with or additional variances will be required.

ADJOURNMENT:

Mr. Day *I move to adjourn this meeting at 7:58 p.m.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

Respectfully submitted,


Thomas A. DAY

Acting Secretary, Board of Adjustment